



# PUBLIC NOTICE

US Army Corps  
of Engineers  
Albuquerque District  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Fax No. 505-342-3498

cespa-od-r@usace.army.mil

Permit Application No:	Date:
2002 00498	December 20, 2002
Phone:	Suspense Date:
(505) 342-3280	January 9, 2003
In Reply Refer to:	
District Engineer, ATTN: CESPA-OD-R	

## PERMIT APPLICATION UNDER SECTION 404 OF THE CLEAN WATER ACT (33 USC 1344)

Summary of After-The-Fact Project: We are requesting public comment on the following project before the above suspense date. The after-the-fact (ATF) application is for a permit to authorize the realignment of Moreno Creek and the placement of excavated material along the west/left bank near Eagle Nest, Colfax County, New Mexico. Details of the project are provided below.

Name of Applicant: The Gary Clay's Children's Trust, 3601 E. Mountain View Road, Phoenix, Arizona 85028, phone 602-996-5114.

Location: The project is located on Moreno Creek approximately 2.5 miles north of Eagle Nest, Colfax County, New Mexico (35° 35.5' N Latitude, 105° 16.1' W Longitude).

Description of Work: The completed project involved the realignment of a portion of Moreno Creek upstream of the applicant's road crossing to his property located north of Eagle Nest, New Mexico. The road crossing at this time contained two small corrugated metal pipe (CMP) culverts, approximately 24" in size. These culverts were filled with debris. During the summers of 2001 and 2002, high flows on Moreno Creek overtopped the west bank, resulting in damage to the applicant's home and other buildings. To protect his property from flood damage, the applicant first diverted the creek to the east and placed an additional culvert in the road crossing. The realigned channel is about 30 feet long and two feet deep. The new culvert is approximately 36 inches in diameter. Debris was then removed from the existing culverts and sediment was removed upstream of the road crossing from an area approximately 50 feet wide by 100 feet long by 10 feet deep. This excavated area now serves as a sediment trap as

well as a river channel. The excavated material (approximately 1,800 cubic yards) was used to create a berm on the west bank. This berm is about 3 to 4 feet high and approximately 300 feet long. The work was done using a bulldozer and a backhoe. The work was conducted during low water conditions from June to August of 2002. The remaining work consists of the planting of trees and grasses along the west bank berm during the spring of 2003.

Purpose and Need: The stated purpose of the project is to prevent flood damage to property and buildings.

Mitigation Proposed by the Applicant: The applicant intends to plant trees and grasses along the left/west bank during the Spring of 2003. This vegetation will help to stabilize the bank and will provide some riparian wildlife habitat.

Plans and Data: Drawings showing the location of the work site and other data are enclosed with this notice. If additional information is desired, it may be obtained from the applicant, or from:

James Wood  
Albuquerque District, Corps of Engineers  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435  
(505) 342-3280

Statement of Findings: The District Engineer has consulted the National Register of Historic Places and no properties listed in the Register are present at the site of the proposed construction. Consultation with the New Mexico State Historic Preservation Office (NMSHPO) has not revealed any pending nominations. This constitutes the extent of cultural resource investigations by the District Engineer. It is possible, however, that presently unknown archeological, scientific, prehistoric, or historic data may be inadvertently lost or destroyed by the work accomplished under the requested permit. In the event that cultural resources are found, the NMSHPO will be contacted for advice on the appropriate action to be taken.

The following is a list of endangered (E) and threatened (T) species and/or critical habitat (CH) for Colfax County, New Mexico:

Bald Eagle (Haliaeetus leucocephalus) - T  
Piping Plover (Charadrius melodus circumcinctus) - T  
Mountain Plover (Charadrius montanus) - T

## NEWS RELEASE

Mexican Spotted Owl (*Strix occidentalis lucida*) - T/CH  
Southwestern Willow Flycatcher (*Empidonax traillii extimus*) - E/CH

Our preliminary review indicates this project will not impact any of these threatened or endangered species or their critical habitat.

The applicant has applied to the New Mexico Environment Department for certification that this work is in compliance with applicable State water quality standards. The applicant is responsible for obtaining all other required Federal, state, and local authorizations for this work.

In accordance with environmental procedures and documentation required by the National Environmental Policy Act of 1969, an environmental assessment will be prepared for this project. Upon completion, the assessment may be seen at the Albuquerque District Office, U.S. Army Corps of Engineers, at the address given above.

Comment: Any comments concerning this project should be received by the District Engineer no later than **January 9, 2003**. Comments received after the end of the Public Notice comment period will not be considered. However, more time may be given if a request, with a valid reason, is received prior to the suspense date. The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed below. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The evaluation of the impact

of this activity will include application of the guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Clean Water Act. All factors relevant to the proposal and the cumulative effects will be considered; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

At the request of the Department of Public Safety, Emergency Management Preparedness, State Coordinator, we are sending a copy of this notice to the local flood plain administrator to apprise the administrator of proposed development within their jurisdiction. In accordance with 44 CFR Part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), participating communities are required to review all proposed development to determine if a flood plain development permit is required. The local Flood Plain Administrator is required to perform this review for all proposed development and maintain records of such review. You may contact:

Department of Public Safety  
State Floodplain Coordinator  
Attn: Mr. Bill Borthwick  
email: [wborthwick@dps.state.nm.us](mailto:wborthwick@dps.state.nm.us)  
Phone: 505-476-9617

If the District Engineer determines that the project complies with the 404(b)(1) guidelines, he will grant the permit unless issuance would be contrary to the public interest.

Any person may request a public hearing. The request must be submitted, in writing, to the District Engineer within 30 days of the date of this notice and must clearly set forth the reasons for holding a public hearing.

Dana R. Hurst  
Lieutenant Colonel, US Army  
District Engineer

Enclosure